

Reimagining Equality

The Imaginary Domain: Abortion, Pornography, and Sexual Harassment. By Drucilla Cornell.* New York and London: Routledge Press, 1995. Pp. ix, 237. \$17.95.

In *The Imaginary Domain*, Drucilla Cornell defends a view of women's equality designed to offer "a new perspective" on "the hotly contested issues of abortion, pornography, and sexual harassment" (p. 4). These issues have presented difficulties for feminist legal thought, particularly when it comes to determining how best to interpret the relation of equality to freedom, on the one hand, and to sexual difference, on the other. Cornell argues that women must be legally recognized as having "the equal chance to transform ourselves into individuated beings who can participate in public and political life as equal citizens" (p. 4). This legal recognition requires the equal protection of "certain minimum conditions of individuation"—such as the right to bodily integrity or to a protected "imaginary domain" (p. 4). Cornell thus reinterprets the harms of denying abortion rights, of pornography, and of sexual harassment in terms of the ways each deprives women of their equal right to these conditions of individuation, and therefore the equal chance to become persons.

Cornell's conception of equality is an original one, stemming from her reliance on John Rawls's theory of justice and Lacanian psychoanalysis. What Cornell takes from the analytic tradition provides many of the book's important innovations. What she takes from Lacanian psychoanalysis varies much more in its plausibility and its usefulness for feminist scholarship. Although she occasionally disappoints, Cornell ultimately provides valuable insights about the issues she addresses and for feminist legal thought more generally.

One of Cornell's most valuable contributions comes from her adaptation of John Rawls's theory of justice. Cornell accepts Rawls's notion of a "veil of ignorance,"¹ but examines it from a position analytically prior to the beginning point of Rawls's theory, which presumes persons capable of engaging in the practical reason upon which the original contract is based. Rawls, according to Cornell, begins by asking "[w]hat must persons be like to engage in practical reason?" and by responding with the presumption that human beings

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1. The veil of ignorance is a heuristic device used to determine which sociopolitical arrangement would be chosen if parties in the original position of contract were ignorant of their position in society. See JOHN RAWLS, *A THEORY OF JUSTICE* 12, 136–37 (1971) [hereinafter *A THEORY OF JUSTICE*]; see also JOHN RAWLS, *POLITICAL LIBERALISM* 22–28 (1993) [hereinafter *POLITICAL LIBERALISM*].

possess both a "sense of justice" and a "capacity for good" (p. 17). Hence Rawls takes personhood as if it were given. In contrast, Cornell conceives of personhood as a struggle that can be thwarted: "What must persons be like to engage in practical reason? They must be individuated enough to have the equivalent chance to become persons in the first place" (p. 18).

According to Cornell, the need to ask this prior question stems in part from an "explicit feminist recognition of just how precious and difficult the achievement of individuation sufficient to undertake the project of becoming a person actually is" (p. 18). Moreover, sex and sexuality are "unique and formative" to human personality, and any feminist theory of legal equality must "explicitly recognize the sexuate bases of each one of us" (p. 6). Cornell's theory of equality thus does not turn on a gender comparison between men and women, but rather argues for "equality for each one of us as a sexuate, and thus a phenomenal, creature" (p. 20). All men and women, all "sexuate" beings, must have equal access to those minimum conditions necessary to the struggle to achieve personhood. For the specification of those conditions, Cornell relies on Lacanian psychoanalysis: The conditions of individuation are "justified through an appeal to empirical practical reason since they demand some recognition of experience, i.e., the experience provided by psychoanalytic knowledge" (p. 18). Cornell elaborates on these conditions in chapters on abortion, pornography, and sexual harassment.

Cornell defends a right to abortion on her first condition of individuation, the right to "bodily integrity" (p. 33). She takes empirical account of this condition by adapting Lacan's concept of the "mirror stage";² this stage begins with an infant's "first experience of perceiving itself as a whole" and persists in certain basic ways throughout one's life (p. 39). Cornell maintains that the process of individuation depends on one's projection and anticipation of oneself, and on the recognition of oneself by others, as a bodily whole or a being with bodily coherence and integrity (pp. 33, 38-43). This activity of projection, anticipation, and recognition by others is basic to one's very sense of having a self, indeed of imagining oneself to be or to "have" a self (p. 39). To deny women's right to abortion, or not to make safe and legal abortions readily accessible to all women, denies women the capacity to project themselves as beings with bodily integrity and thereby deprives women of a condition of individuation necessary for possessing any "meaningful concept of selfhood" (p. 33). Of course, the infant's projection of itself as a bodily coherent being does not coincide with its actual bodily state, which is characterized by bodily disorganization and dependence on others. The infant's sense of bodily integrity thus involves it in the activity of imagining "what has yet to be," its actual achievement of bodily integrity, as "already given" (p. 39)—a perspective Cornell calls the "future anterior." The persistence of

2. See JACQUES LACAN, *ECRITS: A SELECTION* 1-7 (Alan Sheridan trans., Norton 1977) (1966).

the mirror stage into adulthood rests partly on the fact that the future anterior of the projection of one's bodily integrity remains integral to one's sense of "having" a self, and thus renders the fulfillment of actual bodily integrity impossible: Its full achievement, as a projection into the future, is always deferred, but the "anteriority" of this projection means that it must, at the same time, be taken as already given. The harm of denying women the right to abortion, then, arises from the way such a denial fails to protect the "future of anticipation" concerning the continuity of women's bodily integrity and makes the anticipation "of future wholeness impossible for women" (p. 43). Equal protection of the minimum conditions of individuation would require women's right to bodily integrity to be protected through the right to abortion.³

Cornell's accounts of pornography and sexual harassment proceed as does her account of abortion: They identify how each denies women's equal right to the minimum conditions of individuation. The key condition at issue for both pornography and sexual harassment is the protection of what Cornell calls the "imaginary domain"—the recognition that "our sense of freedom is intimately tied to the renewal of the imagination as we come to terms with who we are and . . . wish to be as sexuate beings," that is, to the provision of sufficient "psychic space needed to truly play with imposed and assumed sexual personae" (pp. 8–9). Cornell insists that the very struggle to become a person is inseparable from this psychic space: To close it off is to close off the very sense of freedom that makes possible one's imagination of oneself as a person capable of "having" a self. Accordingly, Cornell's central legal response to pornography would focus on its circulation: She advocates zoning laws designed "to prevent enforced viewing of pornography," that is, laws that regulate "the outward appearance of [establishments selling pornography] and what is displayed in their windows" (p. 103).⁴ Pornographic images, on Cornell's account, harm women in a way that justifies regulating their circulation in public spaces when they become pervasive, unavoidable, and the predominant representation of the "truth" about women's "sex." She emphasizes that "it is not just the confrontation with the images in and of themselves" that creates the harm. Rather, it is "the confrontation with the

3. Cornell's specific formulation of the right to abortion is original. Note, however, that her more general reasoning is similar to that used to defend abortion in other contexts. *See, e.g.,* Brief for Petitioners and Cross-Respondents, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), reprinted in *THE SUPREME COURT CONFRONTS ABORTION: THE BRIEFS, ARGUMENT, AND DECISION IN PLANNED PARENTHOOD V. CASEY* 39, 54 (Leon Friedman ed., 1993) (arguing that personal choices affecting "bodily integrity, identity, and destiny are largely beyond the reach of government" and that abortion rights have permitted women to participate more fully and equally in every facet of society, enabling them to "continue their education, enter the workforce, and otherwise make meaningful decisions consistent with their own moral choices").

4. Cornell's advocacy of zoning to prevent the enforced viewing of pornography is limited to what she calls "zoning out," i.e., display regulation that keeps pornography out of the view of women who do not wish to see it (p. 156). "Zoning out" is not concerned with the question of public decency or with the location of adult stores, cf. *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986) (upholding city ordinance prohibiting location of adult theaters near residential zones, churches, parks, or schools), but is rather concerned that the imaginary domain of all be protected, including those who wish to view pornography.

images in their inevitability, because they are allowed to pervade our public space so thoroughly, that itself constitutes the violation" (p. 148).⁵

Cornell also reinterprets the harm of sexual harassment in terms of the requirement to protect the imaginary domain. More precisely, she views the harm of sexual harassment through "the question of whether or not workplaces provide the social bases for self-respect for all of its workers as sexuate beings" (p. 190).⁶ And this sort of "self-respect" is an integral component of the imaginary domain. For what encroaches on the sense of freedom that comes from "free play with one's sexuality" is, according to Cornell, "imposed sexual shame" (p. 9). Imposed sexual shame means being subjected to cultural fantasies that construe one's sex or sexuality as marks of an inherent unworthiness for happiness, free personhood, and free and equal citizenship (pp. 10–12). This focus on self-respect shifts one's understanding of the harm of sexual harassment away from conceptions that, unwittingly or not, interpret women to be fragile and asexual. Instead, it emphasizes sexual harassment's constricting effects not only on women's self-respect as sexuate beings but also on their "chance of sexual freedom" itself (p. 170).⁷ Thus, consistent with Cornell's understanding of sexual harassment, judges would have to exclude questions of whether the plaintiff engaged in behavior that "asked" for sexual harassment, such as whether she "drank beer" or "wore short skirts" (p. 193).⁸ Behavior of that sort would receive protection as part of the legitimate exercise of one's own imagination as a minimum condition of individuation.

Cornell's work provides particular insights that can be useful even if one does not accept her broader philosophical apparatus.⁹ But overall, the book's most important insights, as well as its flaws or limitations, stem from Cornell's philosophical or theoretical understandings. For example, a key virtue of her adaptation of Rawls is that it allows her equality claim to be made consistent

5. In contrast to Catharine MacKinnon, see CATHARINE A. MACKINNON, *ONLY WORDS* (1993), Cornell does not believe pornography to be inevitably harmful to women (p. 150). However, in contrast with Nadine Strossen, see NADINE STROSSEN, *DEFENDING PORNOGRAPHY* (1995), Cornell does argue for the legal recognition of certain harms to women stemming from pornography, i.e., display regulation to keep pornography "safely in its jacket" (p. 150).

6. This notion of self-respect comes also from Rawls as one of his "primary goods." See *A THEORY OF JUSTICE* *supra* note 1, at 178–83, 440–46, 544–46; *POLITICAL LIBERALISM*, *supra* note 1, at 77–82, 318–20.

7. Unlike Katie Roiphe, see KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR, AND FEMINISM ON CAMPUS* 85–112 (1993), Cornell does not believe that laws against sexual harassment necessarily view women as fragile or unable to respond in their sexuality.

8. *Cf.* *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 69 (1986) (allowing evidence of complainant's "sexually provocative speech or dress" to be admitted as it was "obviously relevant"). Susan Estrich has argued that the standard of evidence in *Vinson* is "painfully familiar" to the "consent standard" in rape law: The "focus of the inquiry [shifts] from the conduct of the man to that of the woman. . . . [A] range of evidence relating to her—how she lives, how she dresses, how she acts—becomes, arguably, relevant to the inquiry." Susan Estrich, *Sex at Work*, 43 *STAN. L. REV.* 813, 827–28 (1991).

9. For example, in her discussion of pornography, Cornell provides some sensible distinctions between political responses (e.g., efforts to unionize the pornography industry) and legal responses (e.g., display regulation) and, within legal responses, between those directed at the production and those directed at the distribution of pornography (pp. 96–97).

with the recognition that some conditions, such as pregnancy, are unique to women alone. Her adaptation of Rawls permits her to reconceive the way in which men and women are alike for purposes of making a legal claim for equality, that is, that men and women are relevantly alike in their need for an equal chance for free personhood. For example, the right to equivalent bodily integrity, the condition of individuation underlying abortion rights, is universal. Of course, it is women who will need the right to abortion in order to maintain bodily integrity—that is, the right to bodily integrity “must be differentially allotted to women” (p. 35)—but the underlying right is the same for both men and women. Seen in this way, the right to abortion is not a grant to women of an “extra” right because of their difference, but rather this right is necessary to maintain equality between the sexes at a “prior” level, that is, at the level of the conditions of individuation. This adaptation is valuable because if women were seen to possess a right to bodily integrity, courts would have to do more than refrain from interfering with a woman’s decision to have an abortion; courts would have an affirmative duty to provide conditions under which safe and affordable abortions were available to all women.¹⁰

Cornell’s adaptation of Lacanian psychoanalysis is less consistently useful for feminist legal thought. Cornell’s most valuable insight into the abortion issue stems largely from her appropriations of Lacan: Her understanding of and focus on the temporal and symbolic aspects of the project of becoming and maintaining oneself with a sense of bodily integrity derive from her interpretation of Lacan’s mirror stage. Her understanding that women must be able to imagine their bodily integrity in the “future anterior”—what has yet to be as already given—provides ground for her persuasive argument that the harm of denying abortion rights affects all women at all times.¹¹ Moreover, Lacanian psychoanalysis shares a virtue of psychoanalytical accounts in general, that is, their awareness of the largely unconscious “culturally encoded fantasies” that reveal themselves in such phenomena as the fear of the “killing mother,” or the split of women into “good girls” and “bad girls.” Cornell’s use

10. Presumably, then, the Supreme Court would have had to decide many of its major abortion cases differently. See, e.g., *Webster v. Reproductive Health Servs.*, 492 U.S. 490 (1989) (upholding state law prohibiting use of public employees and facilities for abortions not necessary to save mother’s life); *Harris v. McRae*, 448 U.S. 297 (1980) (upholding “Hyde Amendment” that severely limits use of federal Medicaid funds for certain medically necessary abortions); *Maher v. Roe*, 432 U.S. 464 (1977) (upholding regulation granting Medicaid benefits for pregnancy and childbirth but denying them for abortions, stating that regulation “places no obstacle—absolute or otherwise—in the pregnant woman’s path to an abortion”).

11. Of course, others have suggested that a right to bodily integrity is implicated in abortion, but without the emphasis on the temporal nature of this right. For example, Judith Jarvis Thomson has suggested an analogy in defense of abortion wherein an individual wakes up to find her body connected to a dialysis-needy violinist who is dependent on her to stay alive. The temporal dimension implied in the suddenness of waking up and finding oneself connected suggests that the harm to this individual would take effect at the moment she awoke and found herself connected against her will and faced with a possible choice about a duty to rescue. See Judith Jarvis Thomson, *A Defense of Abortion*, 1 PHIL. & PUB. AFF. 47, 48–49 (1971). But on Cornell’s account, bodily integrity must be continuously confirmed, and thus the harm in denying abortion rights would take effect long before a woman is faced with a “choice” (p. 51).

of psychoanalysis brings into the foreground the ways in which sexuality and desire, fulfilled or thwarted, are central determinants of the very organization of human social and political life—in short, the connection between eros and civilization.¹² It is helpful, for example, to note that judges who admit evidence as to the “kind” of woman the plaintiff is in a sexual harassment trial may be operating irrationally “before their own fantasies” (p. 173) as to how the feminine sex is to be viewed, a split between the desired mother and the actual mother, a split between the “good” woman and the “bad” woman. On this view, Cornell notes, neither “kind” of woman would have credibility when claiming unwelcome sexual advances: Advances made toward a “bad” woman would be seen as implicitly welcome because “the man himself is tempted by her,” while advances made toward a “good” woman would seem incredible because she has been defined as “the one who does not tempt men” (p. 192).

One need not fully accept the psychoanalytic terms of Cornell’s account to appreciate its usefulness as a heuristic for dealing with this element of fantasy as it bears on evidentiary issues in sexual harassment claims. In fact, Cornell’s use of psychoanalysis is at its best when it is phenomenological or descriptive. However, when Cornell relies on psychoanalysis to provide full-blown explanations of, for example, why men are drawn to pornography or why men sexually harass, her account becomes much less convincing. Consider the following passages: “[T]he truth of pornography [is] . . . that of a man haunted by his own castration anxiety” (p. 160); or “Sexual harassment is an indicator of terror, not power, in men. This terror [is] . . . based on the disidentification with the feminine other, who stands in for the mother” (pp. 219–20). Such explanations are reductive and do not sufficiently account for other decisive factors that are less “primordial” in nature.

This is indeed unfortunate because on the whole Cornell successfully demonstrates the value that philosophy and psychoanalysis can provide to legal thought and even to understandings of such “concrete” issues as abortion, pornography, and sexual harassment. *The Imaginary Domain*’s sophisticated and insightful analysis should be given serious consideration in feminist legal scholarship and in legal thought more generally.

—Heather Keele

12. On this connection, see RENATA SALECL, *THE SPOILS OF FREEDOM: PSYCHOANALYSIS AND FEMINISM AFTER THE FALL OF SOCIALISM* 77–89 (1994); ELLEN WILLIS, *NO MORE NICE GIRLS: COUNTERCULTURAL ESSAYS* 19–50 (1992); SLAVOJ ZIZEK, *TARRYING WITH THE NEGATIVE: KANT, HEGEL, AND THE CRITIQUE OF IDEOLOGY* 200–37 (1993).